

(b) That a competent individual in the position of the ward would likely perform the act under the same circumstances.

(c) That, before the ward had incapacity to perform the act for which approval is sought, he or she did not manifest intent that is inconsistent with the act.

(7) Nothing in this section requires a guardian to file a petition under this section and a guardian is not liable or accountable to any person for having failed to file a petition under this section.

54.22 Petition for authority to sell, mortgage, pledge, lease, or exchange ward's property. The court, on the application petition of the guardian of the estate or of any other person interested in the estate of any a ward, after such notice if any, as any notice that the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease, or exchange any property of the guardianship estate of the ward upon such terms as the court may order, subject to ch. 786. for the purpose of paying the ward's debts, providing for the ward's care, maintenance, and education and the care, maintenance, and education of the ward's dependents, investing the proceeds, or for any other purpose which that is in the best interest of the ward.

****NOTE: I am repeating this ****NOTE because the response was somewhat unclear. This provision appears to be in direct conflict with s. 54.19 (2), (3), and (4), each of which require the guardian to act with respect to the ward's property in ways that are redundant to this provision, but *without* requiring court approval. Which alternative do you prefer? Is the issue related to a dollar value on the property, i.e., property over a value of, say, \$100,000 would require court approval before the guardian may act? Or should either this provision or s. 54.19 (2), (3), and (4) drop out?

54.23 Trust Banks and trust companies, exemption from investment restraints. The limitations of this section Nothing in this chapter relating to the retention, sale, investment, or reinvestment of any asset shall not be applicable may

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tells
to do +
54.22
are
inconsistent

? Repeat
Should
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Yes 8/24

be interpreted to be inapplicable to any bank or trust company authorized to exercise trust powers.

54.25 Guardian Duties and powers of guardian of the person of incompetent. (1) DUTIES. A guardian of the person shall do all of the following:

(a) ~~A guardian of the person of an incompetent appointed under s. 880.33 shall make~~ Make an annual report on the condition of the ward to the court that ordered the guardianship and to the county department designated under s. 55.02. That county department shall develop reporting requirements for the guardian of the person. The report shall include, ~~but not be limited to,~~ the location of the ward, the health condition of the ward, any recommendations regarding the ward, and a statement of as to whether or not the ward is living in the least restrictive environment consistent with the needs of the ward. ~~The guardian may fulfill the requirement under this subsection by submitting the report required under s. 55.06~~ (10).

(b) ~~A guardian of the person shall endeavor~~ Endeavor to secure any necessary care, or services or appropriate protective placement on behalf of for the ward: that are in the ward's best interests, based on all of the following:

1. Regularly inspect, ^{on} in person, the ward's condition, surroundings, and treatment.

2. Examining ^{ation} of the ward's patient health care records and treatment records, ^{and authorize Redisclosure as appropriate.}

3. Attend and participate ^{ation} in staff meetings of any facility in which the ward resides or is a patient, if the meeting includes a discussion of the ward's treatment and care.

4. Inquire into the risks and benefits of, and alternatives to, treatment for the ward, particularly if drastic or restrictive treatment is proposed.

5. ^{service} Specifically consult with health care and social providers & make all necessary treatment decisions.

45 CFR

164.502
(g)(2)

Make sure this is broad enough for HIPAA & will authorize will this HIPAA must

6/2

✓

(2) POWERS. (a) ~~Presumption in favor of limited guardianship.~~ A guardian of the person has only those rights and powers that the guardian is specifically authorized to exercise by court order. Any other right or power is retained by the ward, unless the ward has been declared incompetent to exercise the right under par. (c) or the power has been transferred to the guardian under par. (d).

(b) *Rights retained by individuals determined incompetent.* An individual determined incompetent retains the power to exercise all of the following rights, without consent of the guardian:

1. To have access to and communicate privately with the court and with governmental representatives, including the right to have input into plans for support services, the right to initiate grievances, including under state and federal law regarding resident ^{OP} ~~of~~ patient rights, and the right to participate in administrative hearings and court proceedings.

2. To have access to, communicate privately with, and retain legal counsel, with fees paid by the ward's estate, subject to court approval.

3. To have access to and communicate privately with representatives of the protection and advocacy agency under s. 51.62 and the board on aging and long-term care.

4. To protest a residential placement made under s. 55.05 (5), and to be discharged from a residential placement unless the individual is protectively placed under s. 55.06 or the elements of s. 55.06 (11) are present.

5. To petition for court review of guardianship, protective services, protective placement, or commitment orders.

6. To give or withhold a consent reserved to the individual under ch. 51.

7. To exercise any other rights specifically reserved to the individual by statute or the constitutions of the state or the United States, including the rights to free speech, freedom of association, and the free exercise of religious expression.

(c) *Declaration of incompetence to exercise certain rights.* 1. The court may, as part of a proceeding under s. 54.44 in which an individual is found incompetent and guardian is appointed, declare that the individual has incapacity to exercise one or more of the following rights:

- a. The right to consent to marriage.
- b. The right to execute a will.
- c. The right to serve on a jury.
- d. The right to apply for an operator's license, a license issued under ch. 29, or a credential, as defined in s. 440.01 (2) (a), if the court finds that the individual is incapable of understanding the nature and risks of the licensed or credentialed activity, to the extent that engaging in the activity would pose a substantial risk of physical harm to the individual or others. A failure to find that an individual is incapable of applying for a license or credential is not a finding that the individual qualifies for the license or credential under applicable laws and rules.
- e. The right to consent to sterilization, if the court finds that the individual is incapable of understanding the nature, risk, and benefits of sterilization, after the nature, risk, and benefits have been presented in a form that the individual is most likely to understand.
- f. The right to consent to organ, tissue, or bone marrow donation.
- g. The right to vote, if the court finds that the individual is incapable of understanding the objective of the elective process.

****NOTE: Section 880.33 (9), stats., upon which this language is based, requires that the court's determination be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93 with the responsibility for determining challenges to registration and voting that may be directed against that elector. Otherwise, I think it is possible that the official or agency may have no way of knowing if the vote is countable. Do you want this requirement added to the language? This NOTE also applies to subd. 4.

yes.

2. Any finding under subd. 1. that an individual lacks evaluative capacity to exercise a right must be based on clear and convincing evidence. In the absence of such a finding, the right is retained by the individual.

3. If an individual is declared not competent to exercise a right under subd. 1. or 4., a guardian may not exercise the right or provide consent for exercise of the right on behalf of the individual. If the court finds with respect to a right listed under subd. 1. a., d., e., or f. that the individual is competent to exercise the right under some but not all circumstances, the court may order that the individual retains the right to exercise the right only with consent of the guardian of the person.

4. Regardless of whether a guardian is appointed, a court may declare that an individual is not competent to exercise the right to vote if it finds by clear and convincing evidence that the individual is incapable of understanding the objective of the elective process. If the petition for a declaration of competence to vote is not part of a petition for guardianship, the same procedures shall apply as would apply for a petition for guardianship.

****NOTE: Please see the ****NOTE under subd. 1. g., above.

(d) 1. *Guardian authority to exercise certain powers.* A court may authorize a guardian of the person to exercise all or part of any of the powers specified in subd. 2. only if it finds, by clear and convincing evidence, that the individual lacks evaluative capacity to exercise the power. The court shall authorize the guardian to exercise only those powers that are necessary to provide for the individual's personal

needs, safety, and rights and to exercise the powers in a manner this is appropriate to the individual and that constitutes the least restrictive form of intervention. The court may limit the authority of the guardian with respect to any power to allow the individual to retain power to make decisions about which the individual is able effectively to receive and evaluate information and communicate decisions.

2. All of the following are powers subject to subd. 1:

a. Except as provided under subd. 2. b., c., and d., and except for consent to psychiatric treatment and medication under ch. 51, the power to give informed consent to voluntary or involuntary medical examination and treatment and to the voluntary receipt by the ward of medication, including any appropriate psychotropic medication, if the guardian has first made a good-faith attempt to discuss with the ward the ward's voluntary receipt of the psychotropic medication and the ward does not protest. For purposes of this subdivision 2. a., "protest" means make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication. "Protest" does not mean a discernible negative response to a proposed method of administration of the psychotropic medication. A guardian may consent to the involuntary administration of psychotropic medication only pursuant to a court order under ch. 55. In determining whether medication or medical treatment is in the ward's best interest, the guardian shall consider the invasiveness of the medication or treatment and the likely benefits and side effects of the medication or treatment.

b. Unless it can be shown by clear and convincing evidence that the ward would never have consented to research participation, the power to authorize the ward's participation in an accredited or certified research project if the research might help

the ward; or if the research might not help the ward but might help others, and the research involves no more than minimal risk of harm to the ward.

c. The power to authorize the ward's participation in research that might not help the ward but might help others even if the research involves greater than minimal risk of harm to the ward if the guardian can establish by clear and convincing evidence that the ward would have elected to participate in such research; and the proposed research was reviewed and approved by the research and human rights committee of the institution conducting the research. The committee shall have determined that the research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the federal regulations for research involving human subjects for federally supported projects.

d. Unless it can be shown by clear and convincing evidence that the ward would never have consented to any experimental treatment, the power to consent to experimental treatment if the court finds that the ward's mental or physical status presents a life-threatening condition; the proposed experimental treatment may be a life saving remedy; all other reasonable traditional alternatives have been exhausted; 2 examining physicians have recommend the treatment; and, in the court's judgment, the proposed experimental treatment is in the ward's best interests.

e. The power to give informed consent to social and supported living services.

f. The power to give informed consent to release of medical, treatment, and other confidential records. - Should be broad enough for HIPAA and authorize Redisclosure as well.

g. The power to determine the individual's county or state of residence.

h. The power to make decisions related to mobility and travel.

i. The power to make decisions related to mobility and travel.

j. The power to make decisions related to mobility and travel.

k. The power to make decisions related to mobility and travel.

l. The power to make decisions related to mobility and travel.

m. The power to make decisions related to mobility and travel.

n. The power to make decisions related to mobility and travel.

o. The power to make decisions related to mobility and travel.

p. The power to make decisions related to mobility and travel.

make sure
is in harmony
with leg
council committee
ultimately
decided provision on venue.

received by
w/ 8/24

make a
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under

i. The power to admit the individual to residential facilities as provided under s. 55.05 (5) ~~or~~ make an emergency protective placement under s. 55.06 (11).02 ~~55.06(2)~~

j. The power to choose providers of medical, social, and support living services.

k. The power to make decisions regarding educational and vocational placement and support services or employment.

L. The power to make decisions regarding initiating a petition for the termination of marriage.

m. The power to receive all notices on behalf of the ward.

n. The power to act in all proceedings as an advocate of the ward, except the power to enter into a contract that binds the ward or the ward's property or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the estate:

o. The power to apply for protective placement under s. 55.06 or for commitment under s. 51.20 or 51.45 (13) for the ward.

p. The power to have charge of the ward.

****NOTE: In s. 54.25 (2) (d) 2. i., m., n., o., and p., I have attempted to "weave" in the parts of s. 880.38 (1), stats., that seemed to fit (in LRB-0039/P1, this provision was renumbered s. 54.25 (1) (c)), but it didn't fit well there. The power to "have charge of" the ward is a change from the statutory "have custody of"; is it an acceptable wording change? Back again to my confusion about prohibiting the guardian of the person from entering into a contract that binds the ward — what about a contract with a facility (e.g., a nursing home), which requires a financial commitment? Would it be necessary for the guardian of the estate to sign? If the prohibition is unchanged, the power of the guardian of the person to "admit a ward to certain residential facilities" under subd. i. is, it would seem, significantly less than it first appears to be.

r. Any other power the court may specifically identify.

3. In exercising powers and duties delegated to the guardian of the person under this paragraph, the guardian of the person shall, consistent with meeting the individual's essential requirements for health and safety and protecting the individual from abuse, exploitation, and neglect, do all of the following:

Can the law
will look
at 8/24

WOCIAZ
Children's
Law Section
we look
forward
to your
comments
on this.

NO
8/24

***N

a. Place the least possible restriction on the individual's personal liberty and exercise of constitutional and statutory rights, and promote the greatest possible integration of the individual into his or her community.

b. Make diligent efforts to identify and honor the individual's preferences with respect to choice of place of living, personal liberty and mobility, choice of associates, communication with others, personal privacy, and choices related to sexual expression and procreation. In making a decision to act contrary to the individual's expressed wishes, the guardian shall take into account the individual's understanding of the nature and consequences of the decision, the level of risk involved, the value of the opportunity for the individual to develop decision-making skills, and the need of the individual for wider experience.

c. *whether the word's estate is sufficient to pay for the needed services*

PROCEDURES

54.30 Jurisdiction and venue. (1) JURISDICTION IN CIRCUIT COURT. The circuit court shall have has subject matter jurisdiction over all petitions for guardianship. A guardianship of the estate of any person, once granted, shall extend to all of his or her estate in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786.

****NOTE: I believe that you have changes for this subsection, based on changes from the Legislative Council ch. 55 Committee, but am not sure what they are.

****NOTE: I did not draft language in your proposal that establishes jurisdiction in circuit court over all petitions for protective placement, as such a provision properly belongs in ch. 55. Or, because ch. 55, stats., is proposed to undergo extensive changes under the Legislative Council committee, perhaps such a provision, if not included in the Legislative Council proposal, should be an amendment to one of the committee's appropriate bills.

(2) VENUE. All petitions for guardianship of residents of the state shall be directed to the circuit court of the county of residence of the ~~person subject to~~

6/21/04

Consent

Do we need anything on personal jurisdiction

BA will answer 8/24

D. Note

the petitioner proposes that the proposed ward be protectively placed or where

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guardianship proposed ward or of the county in which the person proposed ward is physically present. A petition for guardianship of the person or estate of a nonresident may be directed to the circuit court of any county where in which the person nonresident or any property of the nonresident may be found or where the proposed ward is physically present

****NOTE: I did not draft language of your proposal that requires that petitions for protective placement be directed to the circuit court, because such a provision more properly belongs in ch. 55. Do you want me to draft it there? As ch. 55 leg. council committee ultimately proposes

****NOTE: Please let me know specifically what you want me to do about the definition of residence and change of residence of a ward by a guardian.

(3) CHANGE OF VENUE. (a) *Original proceeding.* The court wherein in which a petition is first filed shall determine venue. If it is determined the court determines that venue lies in another county, the court shall order the entire record certified to the proper court. A court wherein in which a subsequent petition is filed shall, upon being if it is satisfied of that an earlier filing took place in another court, summarily dismiss such the petition.

(b) *Change of residence of ward or guardian.* If a guardian removes from the county where appointed to another county within the state or a ward removes from the county in which he or she has resided changes residence from one county to another county within the state, the circuit court for the county in which the ward resides may appoint a new guardian as provided by law for the appointment of a guardian. Upon verified petition of the new guardian, accompanied by a certified copy of appointment and bond if the appointment is in another county, and upon the notice prescribed by s. 879.05 to the originally appointed guardian, unless he or she is the same person, and to any other persons that the court shall order, the court of original appointment may order the guardianship accounts settled and the property delivered to the new guardian. venue may be transferred to the ward's new county of residence under the following procedure:

Any interested person

1. ~~A~~ person shall file a petition for change of venue in the county in which venue for the guardianship currently lies.

2. The person filing the petition under subd. 1. shall give notice to the corporation counsel of the county in which venue for the guardianship currently lies and to the register in probate for the county to which change of venue is sought.

****NOTE: Should notice also be given to the corporation counsel of the county to which change of venue is sought? *yes*

3. If no objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies may enter an order changing venue. If objection to the change of venue is made within 15 days after the date on which notice is given under subd. 2., the circuit court of the county in which venue for the guardianship currently lies shall set a date for a hearing within 7 days after the objection is made and shall give notice of the hearing to the corporation counsel of that county and to the corporation counsel and register in probate of the county to which change of venue is sought.

54.34 Petition; fees for guardianship. (1) Any relative, public official or other person, may petition for the appointment of a guardian of a person subject to guardianship for an individual. Such ~~The~~ petition shall state, so far as may be all of the following, if known to the petitioner:

****NOTE: I did not add "or agency" after "person" in s. 54.34 (1), as requested; the definition of "person" in 990.01 (26), stats., which controls terms used throughout the statutes, is broad enough to encompass agencies.

(a) The name, date of birth, residence and post-office address of the proposed ward.

(b) The specific nature of the proposed ward's alleged incapacity with ~~specification of the incompetency or spendthrift habits.~~

DAK look at again 2/24
we see that NOTE
want to make sure this is all consistent with Ch. 55 leg. Council committee's ultimate proposal.

(c) The approximate value of the proposed ward's property and a general description of its nature.

(d) Any assets of the proposed ward previously derived from or benefits of the proposed ward now due and payable from the U.S. department of veterans affairs.

(e) Any other claim, income, compensation, pension, insurance or allowance to which the proposed ward may be entitled.

(f) Whether the proposed ward has any guardian presently.

(g) The name and post-office address of any person nominated as guardian by the petitioner.

(h) The names and post-office addresses of ~~the spouse and presumptive or apparent adult heirs of the proposed ward, and all other persons believed by the petitioner to be interested parties.~~

(i) The name and post-office address of the person or institution having the . if any, that has care and custody of the proposed ward or the facility, if any, that is providing care to the proposed ward.

6/21
(j) The interest of the petitioner, and, if a public official ~~or creditor is the~~ petitioner, ~~then the fact of indebtedness or continuing liability for maintenance or continuing breach of the public peace as well as~~ ~~and~~ the authority of the petitioner to act.

(k) Whether the proposed ward is a recipient of a public benefit, including medical assistance or a benefit under s. 46.27.

(L) The agent under any current, valid power of attorney for health care or durable power of attorney that the proposed ward has executed.

(m) ~~Whether the petitioner is requesting a full or limited guardianship and, if limited, the specific authority sought by the petitioner for the guardian or the specific rights of the individual that the petitioner seeks to have removed or transferred.~~

(n) Whether the proposed ward, if married, has children who are not children of the current marriage.

(2) A petition for guardianship may also include an application for protective placement or protective services or both under ch. 55.

****NOTE: Instead of moving s. 54.34 (3) (renumbered from s. 880.07 (4), stats.), I repealed it, because, as you noted, it's redundant to s. 54.60 (5).

54.36 Examination of proposed ward. Whenever it is proposed to appoint a guardian on the ground of a proposed ward's alleged incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement ^{report stating his or her professional opinion regarding the presence & likely duration of} ~~concerning the mental condition any incapacity of the proposed ward, based upon~~

~~examination.~~ The privilege under s. 905.04 shall does not apply to this the statement. A The petitioner shall provide a copy of the statement shall be provided to the proposed ward, or his or her counsel, the guardian ad litem, and the petitioner's attorney, if any. Prior to the examination, under this subsection, of a person alleged to be not competent to refuse psychotropic medication under s. 880.07 (1m), the person the proposed ward shall be informed that his or her statements made by the proposed ward may be used as a basis for a finding of incompetency and an order for protective services, including psychotropic medication. The person shall also be informed that he or she has a right to remain silent refuse to participate in the examination or speak to the examiner ^{absent a court order,} and that the ~~examiner~~ is required to report to the court even if the person remains silent does not speak to the examiner. The issuance of such a warning to the person prior to each examination establishes a

licensed physician
or psychologist

2/24
other
duration of
any
medical
or
psychiatric
condition
causing

(3) Any court-ordered licensed physician or

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Psychologist⁴⁵ shall have

access to all medical & mental health records without the consent of the ward or proposed ward

presumption that the person understands that he or she need not speak to the examiner. Nothing in this section prohibits the use of a report by a physician or psychologist that is based on an examination of the proposed ward by the physician or psychologist before filing the petition for appointment of a guardian, but the court will consider the recency of the report in determining whether the report sufficiently describes the proposed ward's current state and in determining the weight to be given to the report.

****NOTE: Who informs the proposed ward that his or her statements may be used as a basis for a finding of incompetency? The petitioner? Other? - GAL, doctor

****NOTE: Please review this changed language to make sure I've now captured your intent.

54.38 Notice. (1) FORM AND DELIVERY OF NOTICE. A notice shall be in writing.

A copy of the petition, motion, or other required document shall be attached to the notice. Unless otherwise provided, notice may be delivered in person, by certified mail with return receipt requested, or by facsimile transmission. Notice is considered to be given by proof of personal delivery or by proof that the notice was mailed to the last-known address of the recipient or was sent by facsimile transmission to the last-known facsimile transmission number of the recipient.

****NOTE: Instead of drafting "petition or other moving papers," I consulted Bob Nelson, the civil procedure drafter, who suggested "petition, motion, or other required document." This same comment applies to s. 54.38 (2) (a).

(2) NOTICE OF HEARING FOR APPOINTMENTS AND REHEARINGS, SERVICE, AND DELIVERY.

(intro.) Upon the filing of a petition for guardianship, and the court being of the person or of the estate, including appointment or change of a guardian, if the court is satisfied as to compliance with s. 880.07 54.34, the court shall, except as provided in sub. (3), order service of notice on the proposed ward and guardian, if any, and delivery of notice to interested persons of the time and place of the hearing as follows:

51.30
(4)(b) 4.??

DAK
amend
51.30

See
* NOTE

(2) A

(3) A

See
D-NOTE

See
INSERT
43F

Delete
8/24

(a) A petitioner shall have notice served of a petition for appointment or change of a guardian upon On the proposed incompetent ward and existing guardian, if any, by personal service at least 10 days before the time set for hearing. If such proposed incompetent the proposed ward is in custody or confinement, a the petitioner shall have notice served by registered or certified mail on the proposed incompetent's ward's custodian, who shall immediately serve it on the proposed incompetent ward. The process server or custodian shall inform the proposed incompetent ward of the complete contents of the notice and certify thereon and petition, motion, or other required document: certify on the notice that the process server or custodian served and informed the proposed incompetent and returned ward: and return the certificate and notice to the circuit judge. The notice shall include the names of all persons who are petitioning for guardianship. A copy of the petition shall be attached to the notice. The court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies in writing to the court the specific reasons why the person is unable to attend. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, adversary counsel or other interested person. Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompetent's counsel, if any, guardian ad litem, presumptive adult heirs or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to

Proposed
ward has to
have
person
serve
Exhibit
Guardian
ad litem
lay
person
service
or
register
to
certify
mail

~~such other persons or entities as the court may require. The court shall then proceed under s. 880.33 court.~~

(b) Personally or by mail at least 10 days before the time set for hearing, to all of the following:

1. The proposed ward's counsel, if any.
2. The proposed ward's guardian ad litem.
3. Any presumptive adult heirs of the proposed ward, *under §851.09*
4. Any other interested persons, unless specifically waived by the court.
5. The agent under any durable power of attorney or power of attorney for health care of the ward.
6. Any person who has legal or physical custody of the proposed ward.
7. Any public or private agency, charity, or foundation from which the proposed ward is receiving aid or assistance.

8 Proposed guardian
9 ~~8~~ Any other person that the court requires.

(3) NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR A MINOR ~~When If the~~ proposed ward is a minor, ~~notice shall be given as provided in s. 879.05 the court shall~~ *delivery* ~~order distribution of notice by the petitioner of the time and place of the hearing to~~ all of the following persons, if applicable:

- (a) The proposed ward's spouse, if any.
- (b) The proposed ward's ~~parents~~ parent, unless the parent's parental rights have been judicially terminated.
- (c) ~~A minor~~ The proposed ward, if the proposed ward is over 14 years of age unless the minor appears at the hearing.
- (d) Any other person, ~~agency, institution, welfare department or other entity~~ having that has the legal or actual physical custody of the minor.

✓
****NOTE: I did not change "that" to "who," as requested, since the term "person" may encompass units of government, etc.

(4) REHEARINGS. Notice of a rehearing to determine if a ward is a proper subject to continue under guardianship shall be given as required ~~for the appointment of a guardian under subs. (1), (2), and (3).~~

(5) NOTICE OF APPOINTMENT OF GUARDIAN OF A MINOR WARD. If for any reason the court fails to appoint as guardian the nominee of the minor, the guardian who qualifies shall give notice of the guardian's appointment to the minor by certified mail addressed to the minor's last-known post-office address and shall file an affidavit of such the mailing shall be filed with the court within 10 days after the issuance of letters notice is given.

(6) NOTICE OF PETITION AND HEARING FOR TEMPORARY GUARDIANSHIP. The person petitioning petitioner for appointment of a temporary guardian shall cause give notice to be given under s. 880.08 of that the petition to the minor, spendthrift or alleged incompetent and, if the appointment is made, shall give notice of the appointment to the ward. The time limits of s. 880.08 do not apply to notice given under this subsection proposed ward. The notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship at any time under s. 880.34 within 30 days of receipt of the notice 54.50 (1) (c) 4. The petitioner shall serve notice of the order for hearing on the proposed ward before the hearing or not later than 3 calendar days after the hearing. If the petitioner serves notice after the hearing is conducted and the court has entered an order, the petitioner shall include the court's order with the notice of the order for hearing.

****NOTE: As requested, I retained s. 880.15 (1s), stats., and replaced the former language of s. 54.50 (1) (c) 2. with it. I added to it the language you had requested for a redraft of s. 54.50 (1) (c) 2., however. Rather than placing this in s. 54.50 (1) (c), I have put it in s. 54.38, the notice section. Please review.

54.40 Guardian ad litem in incompetency cases; appointment; duties; termination. (1) APPOINTMENT. The court shall appoint a guardian ad litem whenever it is proposed that the court appoint a guardian on the ground of incompetency under s. 880.33, when a petition is brought under s. 54.34 to protectively place a person or order protective services under s. 55.06, to review any protective placement or protective service order under s. 55.06, ~~to terminate a protective placement under s. 55.06, or at any other time that the court determines it is necessary~~ *to expand on order of guardianship under §54.63, to review & terminate a guardianship*

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state *and in compliance with SCR 36*. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party, or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding *or in any other proceeding that involves the same proposed ward* *or for whom a guardianship has been ordered.*

****NOTE: Should "interested party" be changed to "interested person"? *yes*

(3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of the proposed ward *or person found incompetent* ~~or alleged incompetent~~ as to guardianship, protective placement, and protective services. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but ~~shall not be~~ *is not* bound by, the wishes of the proposed ward ~~or alleged incompetent~~ or the positions of others as to the best interests of the proposed ward ~~or alleged incompetent~~. The guardian ad litem has none of the rights or duties of a

~~general guardian.~~

(4) GENERAL DUTIES. A guardian ad litem shall do all of the following:

OK 8/24

Include 8/24

to Review a guardianship

to expand on order of guardianship under §54.63, to review & terminate a guardianship

or ward 8/24

Add "or person found incompetent"

or ward 8/24

(a) Interview the proposed ward ^{or person found incompetent} ~~or alleged incompetent~~ and explain the contents of the petition, the applicable hearing procedure, the right to counsel, and the right to request or continue a limited guardianship.

(b) Advise the proposed ward ^{or person found incompetent} ~~or alleged incompetent~~, both orally and in writing, of that person's rights to be present at the hearing, to a jury trial, to an appeal, to counsel, and to an independent medical or psychological examination on the issue of competency, at county expense if the person is indigent.

(c) Interview the proposed guardian, the proposed standby guardian, if any, and any other person seeking appointment as guardian and report to the court concerning the fitness of each individual interviewed to serve as guardian and concerning the report under s. 54.15 (8).

****NOTE: Have I handled this provision as the memo intends? It was not clear to me that it had been agreed to employ the criminal history and patient abuse record search under s. 50.065, stats., for s. 54.15 (8) or here.

(d) 1. Review any power of attorney for health care under ch. 155, ^{and} ~~or~~ any durable power of attorney ^{under ch. 243} ~~executed by the proposed ward~~ ^{and} ~~or~~ any other advance planning to avoid guardianship in which the proposed ward had engaged.

2. Interview any agent appointed by the proposed ward under any document specified in subd. 1.

3. Report to the court concerning whether or not the proposed ward's advance planning is adequate to preclude ^{the need for} guardianship.

(e) Request that the court order additional medical, psychological, or other evaluation, if necessary.

(f) If applicable, inform the court and petitioner's attorney or, if none, the petitioner that the proposed ward ~~or alleged incompetent~~ objects to a finding of incompetency, the present or proposed placement, or the recommendation of the

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guardian ad litem as to the proposed ward's or ~~alleged incompetent's~~ best interests or that the proposed ward's or ~~alleged incompetent's~~ position on these matters is ambiguous. If the guardian ad litem recommends that the hearing be held in a place other than a courtroom, the guardian ad litem shall provide the information under this paragraph as soon as possible.

(g) If the proposed ward requests representation by counsel, inform the court and the petitioner or the petitioner's counsel, if any.

(h) Attend all court proceedings related to the guardianship.

(i) Present ~~nontestamentary~~ evidence concerning the best interests of the proposed ward or ~~alleged incompetent~~, if necessary, *except that the GAL may not testify himself or herself*

****NOTE: Does the term "nontestamentary" clarify sufficiently for your purposes that the GAL may not testify in the proceedings?

(j) Report to the court on any ~~other relevant~~ matter that the court requests.

(5) COMMUNICATION TO A JURY. In jury trials under ch. ~~55 or 880~~ ^{54 or 55}, the court or guardian ad litem may tell the jury that the guardian ad litem represents the interests of the proposed ward or ~~alleged incompetent~~.

(6) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates, even if counsel has been appointed for the proposed ward or ~~alleged incompetent~~. The court may extend that appointment, or reappoint a guardian ad litem whose appointment under this section has terminated, by an order specifying the scope of responsibilities of the guardian ad litem. At any time, the guardian ad litem, any party, or the ~~person~~ individual for whom the appointment is made may request that the court terminate any extension or reappointment. The guardian ad litem may

appeal, or may participate in an appeal ~~or may do neither~~. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal.

54.42 Rights of proposed ward. (1) RIGHT TO COUNSEL. (a) The proposed

ward has the right to counsel ~~whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) and shall in addition require representation by full legal counsel whenever the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem, except that if the petition contains the allegations under s. 880.07 (1m) and if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel, a jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under s. 756.06 (2) (b).~~ The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal. if any of the following occurs:

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1. The proposed ward requests counsel.
2. The guardian ad litem or another person states to the court that the proposed ward is opposed to the guardianship petition.
3. The court determines that the interests of justice require counsel for the proposed ward.

(b) Any attorney obtained under par. (a) or appointed under par. (c) shall be an advocate for the expressed wishes of the proposed ward.

(c) ~~If the person requests but is par. (a) 1., 2., or 3. applies but the proposed ward is unable to obtain legal counsel, the court shall appoint legal counsel. If the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06 or for the appointment of a guardian under s. 880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent the person.~~

(2) RIGHT TO JURY TRIAL. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, his or her attorney, or the guardian ad litem, except that the right is waived unless demanded at least 48 hours before the time set for the hearing. The number of jurors for such a trial is determined under s. 756.06

(2) (b). The proposed ward, his or her attorney, or the guardian ad litem each has the right to present and cross-examine witnesses, including any physician or licensed psychologist who reports to the court concerning the proposed ward.

****NOTE: I did not change "or" to "and" in the third sentence, as requested, because it is important to avoid the implication that the ward, attorney, and GAL must act jointly to present and cross-examine witnesses. I did, however, add "each," to distinguish the actor for that sentence from the actor in the first sentence. In ordinary statutory usage, however, "or," when used to link several actors, allows each actor to perform the action and does not exclude one from the other.

ok 8/24

(3) RIGHT TO INDEPENDENT ~~MEDICAL~~ EXAMINATION. If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is

heard on the merits

~~filed~~ to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(4) ~~WARD'S RIGHT TO PAYMENT OF EXPENSES IN TO CONTEST PROCEEDINGS.~~ When If a guardian is appointed the court may allow reasonable expenses incurred by the ward in contesting the appointment, which shall be payable before other attorney & GAL fees

(5) RIGHT TO BE PRESENT AT HEARING. The proposed ward has the right to be present at any hearing regarding the guardianship.

(6) RIGHT TO HEARING IN ACCESSIBLE LOCATION. The proposed ward has the right to have any hearing regarding the guardianship conducted in a location that is accessible to the proposed ward. + manner

54.44 Hearing. (1) TIME OF HEARING; PROVISION OF REPORTS. A petition for guardianship, other than a petition under the circumstances of s. 54.50 (1) or (2), shall be heard within 90 days after it is filed. The guardian ad litem and attorney for the proposed ward shall be provided with a copy of the ~~statement~~ ^{report} of the examining physician or psychologist under s. 54.36 at least 96 hours before the time of the hearing. X

✓ ****NOTE: Note that I added s. 54.50 (1), as well as s. 54.50 (2), as exceptions to the 90-day time limit. Note also, that, pending your decision, s. 54.50 (2) may be moved to ch. 55, stats., as an "admission without court involvement," since it does not, at least initially, depend on a guardianship for its action. However, please see the following wrong
****NOTE.

✓ ****NOTE: Your proposed material does not affect s. 880.075, stats. If you do not intend that I repeal it, where should I put it? Should I make an exception for it in s. 54.44 (1)? yes

(2) STANDARD OF PROOF. Any determination by the court as to whether the proposed ward is incompetent shall be by clear and convincing evidence. or, a spendthrift

BAW:ll
answer
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(3) PRESENCE OF PROPOSED GUARDIAN. The proposed guardian and any proposed standby guardian shall be physically present at the hearing unless the court excuses the attendance of either or, for good cause shown, permits attendance by telephone.

(4) PRESENCE OF PROPOSED WARD. The petitioner shall ensure that the proposed ward attends the hearing unless the attendance is waived by the guardian ad litem. In determining whether to waive attendance by the proposed ward, the guardian ad litem shall consider the ability of the proposed ward to understand and meaningfully participate, the effect of the proposed ward's attendance on his or her physical or psychological health in relation to the importance of the proceeding, and the proposed ward's expressed desires. If the proposed ward is unable to attend the hearing because of residency in a nursing home or other facility, physical inaccessibility, or a lack of transportation and if the proposed ward, guardian ad litem, advocate counsel, or other interested person so requests, the court shall hold the hearing in a place where the proposed ward may attend.

(5) PRIVACY OF HEARING. Every hearing ~~on a petition under s. 880.07 (1m) under this chapter~~ shall be ~~open~~ closed, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be ~~closed~~ open. If the hearing is closed, only ~~persons in interest, including representatives of providers of service and interested persons,~~ their attorneys, and witnesses, may be present.

****NOTE: I deleted "representatives of providers of service" from this subsection because they are included in the definition of "interested person" under s. 54.01 (12). ok 8/24

(6) PROPOSED GUARDIAN INAPPROPRIATE. If the court finds that the proposed guardian is inappropriate, the court shall request that a petition proposing a suitable guardian be filed, shall set a date for a hearing to be held within 30 days, and shall

require the guardian ad litem to investigate the suitability of a new proposed guardian.

54.46 Disposition of petition. After the hearing under s. 54.44, the court shall dispose of the case in one of the following ways:

(1) DISMISSAL OF THE PETITION. (a) If the court finds any of the following, the court shall dismiss the petition:

1. Contrary to the allegations of the petition, the proposed ward is not any of the following:

- a. Incompetent.
- b. A spendthrift.
- c. A minor.

2. Advance planning by the ward renders guardianship unnecessary.

3. The elements of the petition are unproven.

(b) The court may also consider an application by the proposed ward for the appointment of a conservator under s. 54.76.

(2) PROTECTIVE ARRANGEMENT; FINANCIAL TRANSACTIONS; APPOINTMENT OF SPECIAL GUARDIAN. (a) If a proposed ward is found to be a minor, incompetent, or a spendthrift, the court may, without appointing a guardian, do any of the following if the court first considers the interests of dependents and creditors of the ward and whether a guardianship is necessary, given the ward's functional level:

1. Authorize, direct, or ratify any transaction or series of transactions necessary to achieve any security, service, or care arrangement that meets the foreseeable needs of the ward.

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powers of attorney, trusts, or
joint accounts

This includes but is not limited to
attorney, trusts, or
joint accounts

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2. Authorize, direct, or ratify a contract, trust, or other transaction related to the ward's property or financial affairs if necessary as a means of providing for the personal needs of or property management for the ward.

(b) The court may appoint a special guardian to assist in the accomplishment of any protective arrangement or transaction under par. (a). The special guardian has any authority conferred by the order of appointment, shall report to the court on all actions taken under the order of appointment, and shall serve until discharged by order of the court. (The court may approve a reasonable compensation for the special guardian, except that, if the court finds that the special guardian has failed to discharge his or her duties satisfactorily, the court may deny or reduce the amount of compensation or remove the special guardian)

Subsection 8/24 ✓
(c) This section is applicable only to actions that could be taken by a guardian of the estate
****NOTE: Should the compensation language be under subch. V, around s. 54.72 or 54.74, instead of here? Yes, if this sub. is kept 8/24 ✓

(3) APPOINTMENT OF GUARDIAN; ORDER. If the proposed ward is found to be incompetent, a minor, or a spendthrift, the court may enter a determination and order appointing a guardian that specifies any powers of the guardian that require court approval, as provided in ss. 54.20 (2) and 54.25 (2), and may provide for any of the following:

****NOTE: I have assumed that s. 54.46 (3) was intended to replace s. 880.12, stats., although s. 54.46 (3) makes no mention of the language under s. 880.12 (2), stats. On Betsy Abramson's advice, I have repealed s. 880.12.

(a) Co-guardians. [The court may appoint co-guardians of the person or co-guardians of the estate, subject to any conditions that the court imposes.] Unless otherwise ordered by the court, each decision made by a co-guardian with respect to the ward must be concurred in by any other co-guardian, or the decision is void.

(b) Power of attorney for health care. If the proposed incompetent ward has executed a power of attorney for health care under ch. 155, find that the power of

See my change all 8/24 ✓

This was moved to §.13 to a created §54.10(5). May it remain here, too?

attorney for health care instrument ~~should remain~~ remains in effect. ~~If the court so finds, the court shall so order and shall, except that the court may, only for good cause shown, revoke the power of attorney for health care or limit the power of the guardian to make those health care decisions for the ward that are not to be made by the health care authority of the agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.~~

****NOTE: This provision may require amending the health care power of attorney chapter, which will, if necessary, be done in a subsequent version.

(c) *Durable power of attorney.* If the ward has executed a durable power of attorney, the durable power of attorney remains in effect, except that the court may, only for good cause shown, revoke the durable power of attorney or limit the authority of the agent under the terms of the durable power of attorney.

****NOTE: This provision may require amending the durable power of attorney chapter, which will, if necessary, be done in a subsequent version.

(4) FEES AND COSTS OF PETITIONER. (a) Petitioner's attorney fees and costs.

Except as provided in par. (b), when If a guardian is appointed, the court shall award from the ward's estate payment of the petitioner's reasonable attorney fees and costs, including those fees and costs, if any, related to protective placement of the ward, unless the court finds, after considering all of the following, that it would be inequitable to do so:

****NOTE: In the Legislative Council draft WLC: 0220/P1, "including those fees and costs, if any, related to protective placement of the ward" is stricken. Do you wish to also strike that language in this draft? *yes* ✓

****NOTE: I did not eliminate "Except as provided in par. (b)" from this paragraph, as requested, because the new paragraph (b) (formerly numbered s. 54.32, renumbered from s. 880.33 (2) (a) 3., stats.) (guardian ad litem and defense fees for indigents; liability) seems to be a clear exception to paragraph (a).

1. The petitioner's interest in the matter, including any conflict of interest that the petitioner may have had in pursuing the guardianship.

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AA SEE p 54 define first (?)

2. The ability of the ward's estate to pay the petitioner's reasonable attorney fees and costs.

3. Whether the guardianship was contested and, if so, the nature of the contest.

4. ~~If the court finds that~~ Whether the ward had executed a durable power of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had engaged in other advance planning to avoid guardianship, ~~the court may not make the award specified in par. (a).~~

5. Any other factors that the court considers to be relevant.

(b) *Guardian ad litem and defense fees for indigents: liability.* If the person proposed ward is an adult who is indigent, the county of legal settlement shall be in which venue lies for the guardianship proceeding is the county liable for any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for any legal fees due the person's proposed ward's legal counsel. ~~If the person is a minor, the person's parents or the county of legal settlement shall be liable for any fees due the guardian ad litem as provided in s. 48.235 (8).~~

(c) *Fees if guardian is not appointed.* If a guardian is not appointed under sub. (2) or (3), the county in which venue lies for the guardianship proceeding is the county liable for any fees due the guardian ad litem. The proposed ward is liable for any fees due his or her legal counsel, except as follows:

1. If counsel is appointed under s. 977.08, the proposed ward is liable only for the fees applicable under s. 977.07 and 977.075.

2. If the court finds the petition for guardianship frivolous under s. 814.025, the court may assess fees to the petitioner.

3. If the proposed ward is indigent and counsel is not appointed under s. 977.08, the county in which venue lies for the guardianship proceeding is liable.

✓
****NOTE: I included in this paragraph mention of public defender representation, because par. (b) mentions it. Is this drafted as you wish? OK

(5) BOND. (a) Form Amount and sufficiency of bond. Upon the appointment of a guardian of the estate of a ward, except as provided under s. 880.60 (9), the court may require a bond given in accordance with ch. 878 and s. 895.345 The order under sub. (3) shall specify the amount of any bond required to be given by the guardian of the estate, conditioned upon the faithful performance of the duties of the guardian of the estate. No bond may be required for the guardian of the person.

(b) Waiver of Bond. Unless required under s. 880.60 (9), the court may waive the requirement of a bond at under any of the following circumstances:

1. At any time in its discretion or if,

2. If so requested in a will wherein in which a nomination appears.

3. Whenever If a guardian has or will have possession of funds of the ward with a total value of \$40,000 \$100,000 or less, and the court may direct directs deposit of the funds in an insured account of a bank, credit union, savings bank, or savings and loan association in the name of the guardian and the ward and payable only upon further order of the court. In such event the court may waive the requirement of a bond.

(6) WHEN LETTERS TO BE ISSUED LETTERS OF GUARDIANSHIP. When If a guardian of the estate has given bond as, if required, and the bond has been approved by the judge court, letters under the seal of the court shall be issued to the guardian of the estate. If a court determination and order appointing a guardian of the person is entered, letters under the seal of the court shall be issued to the guardian of the person.

(7) EMANCIPATION OF MARRIED MINORS. Except for ~~minors~~ a minor found to be incompetent, upon marriage, a minor ~~shall is~~ no longer be a proper subject for guardianship of the person ~~and a~~. A guardianship of the person is revoked by the marriage of a minor ward. Upon application, the court may release in whole or in part the estate of a minor ward to the ward upon the ward's marriage. Upon marriage, ~~the guardianship of an incompetent is subject to review under s. 880.34.~~

****NOTE: I repealed the last sentence (it is broader than merely applying to a minor), but am uncertain if that is what you want. Your proposal does not touch s. 880.34 (2)--do you no longer want to have marriage of an incompetent considered as a trigger for review of the guardianship? correct for adults

54.47 Lis pendens, void contracts. A certified copy of the petition and order for hearing provided for in ss. 880.07 54.34 and 880.08 54.38 may be filed in the office of the register of deeds for the county; ~~and if~~. If a guardian shall be is appointed upon such application after a hearing on the petition, all contracts, except for necessities at reasonable prices, and all gifts, sales, and transfers of property made by such ~~insane or incompetent person or spendthrift,~~ the ward after the filing of a certified copy of such petition and the order as aforesaid, shall be void. The are void, except the guardian in writing and except that ~~that the validity of a contract made by a person a ward under a limited guardianship is not void, however, unless the determination is made by the court in its court's order includes a finding under s. 880.33 (3) that the ward is incapable of exercising the power to may not make contracts.~~

****NOTE: Have I amended this section as you intend? yes

54.48 Protective placement and protective services. A finding of incompetency and appointment of a guardian under this subchapter chapter is not grounds for involuntary protective placement. ~~Such or the provision of protective services.~~ Protective placement and the provision of protective services may be made only in accordance with s. 55.06 ch. 55.

see also 54.64
(3)(d)

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54.50 Temporary guardianships. (1) TEMPORARY GUARDIAN. (a) Standard.

If it is demonstrated to the court that a proposed ward's particular situation, including the needs of the proposed ward's dependents, requires the immediate appointment of a temporary guardian of the person or estate, the court may appoint a temporary guardian under this section.

(b) Appointment Duration and extent of authority. ~~If, after consideration of a petition for temporary guardianship, the court finds that the welfare of a minor, spendthrift or an alleged incompetent requires the immediate appointment of a guardian of the person or of the estate, or of both, it~~ The court may appoint a temporary guardian for a ward for a period not to exceed 60 days unless further extended for 60 days by order of the court. The court may extend the period only once, except that the court may extend this period for good cause shown for one additional 60-day period. The court may impose no further temporary guardianship on the ward for at least 90 days after the expiration of the temporary guardianship and any extension. The court's determination and order appointing the temporary guardian shall specify the authority of the temporary guardian and shall be limited to those acts that are reasonably related to the reasons for appointment that are specified in the petition for temporary guardianship. The authority of the temporary guardian shall be ~~is~~ limited to the performance of duties respecting specific property, ~~or to the performance of particular those acts, as stated in the order of appointment.~~ All provisions of the statutes concerning the powers and duties of guardians shall apply to temporary guardians except as limited by the order of appointment. The temporary guardian shall make the reports the court directs and shall account to the court upon termination of authority. The court assigned to exercise jurisdiction under chs. 48 and 938 has exclusive jurisdiction over the appointment of a temporary

guardian of a minor for medical purposes but shall proceed in accordance with this section ~~Unless the court first specifically approves and orders bond, the temporary guardian may not sell real estate or expend an amount in excess of \$2,000.~~

(c) *Procedures for appointment.* All of the following procedures apply to the appointment of a temporary guardian:

1. Any person may petition for the appointment of a temporary guardian for an individual. The petition shall contain the information required under s. 54.34 (1), shall specify reasons for the appointment of a temporary guardian and the powers requested for the temporary guardian, and shall include a petition for appointment of a guardian of the person or estate or state why such a guardianship is not sought.

****NOTE: Note that the notice provisions concerning petition and hearing for temporary guardianship have been moved from this section to s. 54.38 (6).

2. The court shall appoint a guardian ad litem, who shall attempt to meet with the proposed ward before the hearing or as soon as is practicable after the hearing, but not later than 7 calendar days after the hearing. The guardian ad litem shall report to the court on the advisability of the temporary guardianship at the hearing or not later than 10 calendar days after the hearing.

3. The court shall hold a hearing on the temporary guardianship, ^{Such hearing shall be held} no earlier than 48 hours after the filing of the petition unless good cause is shown. At the hearing, the petitioner shall provide a report or testimony from a physician or psychologist that indicates that there is a reasonable likelihood that the proposed ward is incompetent. The guardian ad litem shall attend the hearing in person or by telephone or, instead, shall provide to the court a written report concerning the proposed ward for review at the hearing.

4. If the court appoints a temporary guardian and if the ward, his or her counsel, the guardian ad litem, or an interested party requests, the court shall order a rehearing on the issue of appointment of the temporary guardian within 10 calendar days after the request. If a rehearing is requested, the temporary guardian may take no action to expend the ward's assets, pending a rehearing, without approval by the court.

(d) *Cessation of powers.* ~~If the temporary guardianship is not sooner terminated the~~ The duties and powers of the temporary guardian shall cease upon the issuing of letters of permanent guardianship to the guardian of the ward, or, if the ward is a minor, upon his becoming of age, or when it shall be judicially determined ^{the} expiration of the time period, or extension of the time period, specified in sub. (1) (b), or if the court sooner determines that any other disability of the temporary ward which situation of the ward that was the cause of the temporary guardianship has terminated. Upon the termination of the temporary guardian's duties and powers, a temporary guardian of the person shall file with the court any report that the court requires. A temporary guardian of the estate shall, upon the termination of duties and powers, account to the court and deliver to the person or persons entitled to them all the estate of the ward in his or her hands the ward's estate over which the temporary guardian of the estate has had control. Any action which that has been commenced by the temporary guardian may be prosecuted to final judgment by the successor or successors in interest, if any.

****NOTE: Please review this paragraph (renumbered from s. 880.15 (3)) to ensure that it meets your intent.

This should be its own section

~~CERTAIN ADMISSIONS TO FACILITIES.~~ (a) In this section subsection. notwithstanding s. 54.01 (10), "incapacitated" means unable to receive and evaluate

information effectively or to communicate decisions to such an extent that the individual ~~lacks the capacity~~ is unable to manage his or her health care decisions, including decisions about his or her post-hospital care.

(b) An individual under ~~sub. (3) par. (c)~~ may consent to admission, ~~directly from a hospital to a facility, as defined in s. 50.01 (1m),~~ of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent under ch. 880 54, if all of the following apply:

1. No person who is listed under ~~sub. (3) par. (c)~~ in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

2. a. Except as provided in ~~subd. 2. b.~~, no person who is listed under ~~sub. (3) par. (c)~~ and who resides with the incapacitated individual disagrees with the proposed admission.

b. Subdivision ~~1. 2. a.~~ does not apply if ~~any of the following applies: the individual who is consenting to the proposed admission resides with or is the spouse of the incapacitated individual.~~

3. The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

4. A petition for guardianship for the individual under s. 880.07 54.34 and a petition for protective placement of the individual under s. 55.06 (2) are filed prior to the proposed admission.

(c) The following individuals, in the following order of priority, may consent to an admission under ~~sub. (2) par. (b)~~:

1. The spouse of the incapacitated individual.

"1½" - An individual living with the incapacitated individual in a spouse-like arrangement

Need better language → but this is the concept

2. An adult son or daughter of the incapacitated individual.
3. A parent of the incapacitated individual.
4. An adult brother or sister of the incapacitated individual.
5. A grandparent of the incapacitated individual.
6. An adult grandchild of the incapacitated individual.
7. An adult close friend of the incapacitated individual.

(d) A determination that an individual is incapacitated for purposes of ~~sub. (2)~~ par. (b) shall be made by 2 physicians, ~~as defined in s. 448.01 (5),~~ or by one physician and one licensed psychologist, ~~as defined in s. 455.01 (4),~~ who personally examine the individual and sign a statement specifying that the individual is incapacitated. Mere old age, eccentricity, or physical disability, either singly or together, are insufficient to make a finding that an individual is incapacitated. Neither of the individuals who make a finding that an individual is incapacitated may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has a claim on any portion of the individual's estate. A copy of the statement shall be included in the individual's records in the facility to which he or she is admitted.

(e) 1. Except as provided in ~~par. (b)~~ subd. 2., an individual who consents to an admission under this section ~~subsection~~ may, for the incapacitated individual, make health care decisions to the same extent as a guardian of the person may and authorize expenditures related to health care to the same extent as a guardian of the estate may, until the earliest of the following:

- a. Sixty days after the admission to the facility of the incapacitated individual.
- b. Discharge of the incapacitated individual from the facility.
- c. Appointment of a guardian for the incapacitated individual.

2. An individual who consents to an admission under this section subsection may not authorize expenditures related to health care if the incapacitated individual has an agent under a durable power of attorney, as defined in s. 243.07 (1) (a), who may authorize expenditures related to health care.

(f) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if sub. (5) (a) par. (e) 1. applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

(g) An individual who consents to an admission under this section subsection may request that an assessment be conducted for the incapacitated individual under the long-term support community options program under s. 46.27 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is available for the individual, a functional and financial screen to determine eligibility for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the incapacitated individual or if the incapacitated individual is about to be admitted on a private pay basis, the individual who consents to the admission may waive the requirement for a financial screen under s. 46.283 (4) (g), unless the incapacitated individual is expected to become eligible for medical assistance within 6 months.

(h) If the allegedly incapacitated individual, his or her guardian ad litem, or any interested person objects to the admission, the individual, guardian ad litem, or person may request the court in which the guardianship petition is pending to hold a hearing on whether the individual is incapacitated or whether the admission shall continue before the guardianship hearing. If requested, the court shall hold such a hearing within 7 calendar days after receipt of the request.

If it is the allegedly incapacitated individual who objects, follow procedures of WLC/0228 §56 (page 62) — call ADS, investigate, release, or hearing

✓
****NOTE: If you do not want sub. (2) to be under s. 54.50, where do you want it to be placed? *Should be its own section - or cross-reference to ch. 55 from ch. 54 if put there.*

54.52 Standby guardianship. (1) A person may at any time bring a petition for the appointment of a standby guardian of the person or property or both estate of a minor or person found incompetent under s. 880.08 to assume the duty and authority of guardianship on the death, incapacity or resignation of the initially appointed guardian may be brought under this chapter at any time. A petition for the appointment of a standby guardian of the person or property or both of a minor to assume the duty and authority of guardianship on the incapacity, death, or debilitation and consent, of the minor's parent shall be brought under s. 48.978 an individual who is determined under s. 54.10 to be incompetent ~~or upon~~ or a spendthrift.

(2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or property estate whose appointment shall become effective immediately upon the death, ^{*unwillingness or to act*} incapacity ^{*or court's removal*} inability, or resignation of the initially appointed guardian ^{*or the court*} or during a period, as determined by the initially appointed guardian, when the initially appointed guardian is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court. Upon notification, the court shall issue new letters of guardianship that specify that the standby guardianship is permanent or that specify the time period for a limited standby guardianship.

BA will
answer
8/24

CHILDREN
& THE
LAW - your
thoughts?

****NOTE: Your proposal contains two provisions concerning standby guardians for minors. 1997 Wisconsin Act 334 created s. 48.978 (appointment or designation of standby guardian of a child). Because these provisions exist in current law, I have not drafted the provisions in your proposal. Your redraft instructions are for me to "add" this to s. 54.52; do you want me to renumber all of s. 48.978, stats., into ch. 54? There are substantial problems of reconciliation, including, in s. 48.978 (1) (c), stats., a definition of "incapacity" that differs from the definition in s. 54.01 (10).

*NOTE

54.54 Successor guardian. (1) APPOINTMENT. When a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor guardian. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.

(2) NOTICE. If the appointment under sub. (1) is made without hearing, the successor guardian shall provide notice to the ward and all interested persons of the appointment, the right to counsel and the right to petition for reconsideration of the successor guardian. The notice shall be served personally or by mail not later than 10 days after the appointment.

SUBCHAPTER V

POST-APPOINTMENT MATTERS

54.60 Inventory. (1) INVENTORY REQUIRED. ~~When a~~ The guardian of the estate has been appointed an inventory shall be made in the same manner and subject to the same requirements as are provided for the inventory of a decedent's estate. An appraisal of all or any part of the ward's estate shall be made when ordered by the court prepare an inventory that lists all of the ward's property and interests in

property, including any marital property interest, regardless of how the asset is titled.

(2) CONTENTS OF INVENTORY. The inventory shall provide all of the following information with respect to each asset:

- (a) How the asset is held or titled.
- (b) The name and relationship to the ward of any co-owner.
- (c) The marital property classification of the property and, for any property that is marital property, the spouse who has management and control rights with respect to the property.

(3) TIME FOR FILING. The guardian of the estate shall file the initial inventory within 60 days after appointment, unless the court extends or reduces the time.

(4) NOTICE OF INVENTORY. The court shall specify the persons to whom the guardian shall provide copies of the inventory.

(5) FEE. The guardian of the estate shall pay from the ward's estate the fee specified in s. 814.66 (1) (b) 2. at the time the inventory or other documents concerning the estate's value are filed.

(6) APPRAISAL. The court may order that the guardian of the estate appraise all or any part of the ward's estate.

(7) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by the to the best of the guardian's knowledge & belief guardian's oath ~~that~~ every inventory required of the guardian and verification shall be to the effect that the inventory is true of includes all property which that belongs to his or her decedent's estate or his or her ward, which has come to the estate of the ward, in the guardian's possession or knowledge, and that upon diligent inquiry the guardian has not been able unable to discover any property belonging to the estate or ward which is not included therein that the inventory does not include. The court,

at the request of any party interested, or on its own motion, may examine the guardian on oath ~~in relation thereto~~, as to the inventory or ~~in relation to~~ any supposed omission from the inventory.

54.62 Accounts. (1) ANNUAL REPORTS. ~~Every~~ Except as provided in sub. (3) or unless waived by a court, every guardian, ~~except including~~ a corporate guardian, shall, prior to April 15 of each year, file an account under oath specifying that specifies the amount of property received and held or invested by the guardian, the nature and manner of the investment, and the guardian's receipts and expenditures during the preceding calendar year. ~~When ordered by the court, The court may order~~ the guardian ~~shall within 30 days to~~ render and file, within 30 days, a like account for ~~any shorter term less than a year~~. In lieu of the filing of these accounts before April 15 of each year, the court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to ~~thereafter~~ render and file the annual accountings within 60 days after the anniversary date of the guardian's qualification as guardian, with the accounting period from the anniversary date of qualification to the ensuing annual anniversary date. ~~When any guardian of a minor has custody of the ward and the care of the ward's education, the guardian's report shall state the time that the ward attended school during the time for which the account is rendered and the name of the school.~~ The guardian shall also report any change in the status of the surety upon the guardian's bond. If the court determines it to be in the ward's best interests, the court may specify the persons to whom the guardian shall distribute copies of the account.

(2) DISPLAY OF ASSETS. Upon rendering the account the guardian shall produce for examination by the court, or ~~some~~ by a person satisfactory to the court, evidence of all of the ward's securities, evidences of deposit depository accounts, and other

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investments reported, which shall be described in the account in sufficient detail so that they may be readily identified. It shall be ascertained The court or person satisfactory to the court shall ascertain whether the evidence of securities, evidences of deposit depository accounts, and other investments correspond with the account.

OK
8/24
****NOTE: I replaced the term "deposit" with "depository accounts," and defined that term in s. 54.01 (5) using the definition in s. 815.18 (2) (e), stats. Is this the meaning you intended? I also added "of the ward's" in the first sentence; it's unnecessary to add it to the second, because the referent "the evidence of ... etc." suffices.

(3) SMALL ESTATES. (a) If a ward's estate does not exceed ~~\$5,000~~ ^{\$20,000 - the amount specified in} in value, the ^{\$867.03} guardian need not file an account under sub. (1) unless otherwise ordered to do so by the court. For the purposes of this paragraph, the value of the ward's estate does not include the ward's income, any burial trust possessed by the ward, or any term or other life insurance policy that is irrevocably assigned to pay for the disposition of the ward's remains at death.

(b) If the ward's estate, as calculated under par. (a), increases above ~~\$5,000~~ ^{\$20,000 - the amount specified in} in value, the guardian shall so notify the court, which shall determine if an annual ^{\$867.03} account under sub. (1) or a final account under s. 54.66 is required.

(4) ANNUAL ACCOUNTS OF MARRIED WARDS. (a) For a married ward, the court may waive filing of an annual account under sub. (1) or permit the filing of a modified annual account, which shall be signed by the ward's guardian and spouse and shall consist of all of the following:

1. Total assets of the ward, as determined under ch. 766, on January 1 of the year in question.
2. Income in the name of the ward, without regard to ch. 766, and the ward's joint income.

3. Expenses incurred on behalf of the ward, including the ward's proportionate share of household expenses if the ward and the ward's spouse reside in the same household, without regard to ch. 766.

4. Total assets of the ward, as determined under ch. 766, on December 31 of the year in question.

****NOTE: I may have questions about this subsection after consulting with the Domestic Relations drafter, who is presently unavailable.

(b) The court shall provide notice of the waiver under par. (a) to any adult child of the ward.

(5) EXAMINATION OF ACCOUNTS. The account shall be promptly examined under the court's direction and if it as the court directs. If the account is not satisfactory it shall be examined on 8 days' notice and, the court shall make such order thereon order action as justice requires. Notice and shall direct that notice be provided to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice. If notice is provided to the guardian under this subsection, the court may appoint a guardian ad litem of for the ward may be appointed.

(6) ACCOUNTING BY AGENT THIRD PARTIES TO GUARDIAN. The circuit court, upon the application of any If a guardian appointed by it a court so requests, the court may order any person who has been entrusted by the guardian with any part of the estate income or assets of a decedent or ward to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to the estate which have come to the person's possession the income or assets and of his or her proceedings thereon action regarding the income or assets. If the person

refuses to appear and render an account, the court may proceed against him or her as for contempt.

****NOTE: I think current law refers to "decedent or ward" because of the way s. 54.64 (1) is worded (guardianship continues during life of ward, etc.). I eliminated "decedent," but I'm unsure if that's the right decision. *yes it was*

****NOTE: There is no definition of "estate" ^{or} "property" in ch. 880, stats., and I would defer to your judgment as to whether the terms include both assets and income. I have in this subsection changed all references to "estate" or "property" to "income or assets." Do you want me to define "estate" for ch. 54 as including income and assets? *(yes)*

(7) NOTICE OF FINAL ACTION ON AN ACCOUNT (intro.) No action by the court upon

any on an account shall be is final unless it is upon the guardian first provides notice.
to all of the following as applicable

- (a) The ward.
- (b) Any guardian ad litem appointed by the court.
- (c) Any personal representative or special administrator ^{of the estate of the deceased ward} appointed by the court.

54.63 Expansion of order of guardianship; procedure. (1) If the guardian or another interested person submits to the court a written statement with relevant accompanying support requesting the removal of rights from the ward and transfer to the guardian of powers in addition to those specified in the order of appointment of the guardian, based on an expansion of the ward's incapacity, the court shall do all of the following:

- (a) Appoint a guardian ad litem for the ward.
- (b) Order that notice, including notice concerning potential court action if circumstances are extraordinary, be given to all of the following:
 - 1. The county department of social services or human services if the ward is protectively placed or receives long-term support services as a public benefit.
 - 2. The ward.

3. The guardian.

4. The agent under the ward's power of attorney for health care under ch. 155
and or durable power of attorney, if any.

5. Any other persons determined by the court.

(2) (a) If, after 10 days after notice is provided under sub. (1) (b), or earlier if the court determines that the circumstances are extraordinary, no person submits to the court an objection to the request under sub. (1), the court may amend the order entered under s. 54.46 (3) and enter a determination and the amended order that specifies any change in the powers of the guardian.

(b) If, within 10 days after notice is provided under sub. (1) (b), a person submits to the court an objection to the request under sub. (1), *the court shall hold* ~~any person may request a~~ *hearing unless the objector declines a hearing,* hearing under the procedure specified in s. 54.64 (2).

54.64 Duration Review and termination of guardianship; review. (1)

DURATION. Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or ward, until terminated by the court, or as provided under sub (3) or (4). Upon reaching the age of majority, an incompetent subject to guardianship under this chapter shall be reviewed by the court for the purpose of determining whether the guardianship should be continued or modified. ~~The court shall make a specific finding of any rights under s. 880.33 (3) which the individual is competent to exercise at the time.~~

(2) REVIEW AND MODIFICATION. (a) A ward who is 18 years of age or older, any interested person acting on the ward's behalf, or the ward's guardian may petition for a review of incompetency. Upon such at any time after 180 days after any previous hearing under s. 54.44, or at any time if the court determines that exigent

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circumstances, including presentation of new evidence, require a review. If a petition for review is filed, the court shall conduct do all of the following:

1. Appoint a guardian ad litem.
2. Fix a time and place for hearing.
3. Designate the persons who are entitled to notice of the hearing and designate the manner in which the notice shall be given.

4. Conduct a hearing at which the ward shall be is present and shall have has the right to a jury trial, if demanded. The ward shall also have the right to counsel and the court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of the ward's county of legal settlement.

(b) The ward has the right to counsel for purposes of the hearing under par. (a). Notwithstanding any finding of incompetence for the ward, the ward may retain and contract for the payment of reasonable fees to an attorney, the selection of whom is subject to court approval, in connection with proceedings involving review of the terms and conditions of the guardianship, including the question of incompetence. The court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, the county of jurisdiction for the guardianship shall provide counsel at the county's expense. ✕

(c) After a hearing under sub. (4) par. (a) or on its own motion, a court may terminate or modify a the guardianship of an incompetent, including restoring certain of the ward's rights.

(3) GUARDIANSHIP TERMINATION OF GUARDIANSHIP OF THE PERSON. A guardianship of the person shall terminate when if any of the following occurs:

(a) The court adjudicates a former ward who was formerly found to be incompetent to be competent no longer incompetent or a ward who was formerly found to be a spendthrift to be capable of handling his or her property.

(b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence.

****NOTE: What if the guardian changes residence from this state to another state?

No impact

(c) A formerly minor ward attains his or her majority, unless the minor is incompetent age 18, except where the guardianship was ordered on the grounds of incompetency.

****NOTE: This provision changes current law (s. 880.26 (1) (a), stats.), which appears to continue a guardianship without other action when a minor, incompetent ward reaches age 18. Just to be sure, are you intending that an incompetent minor's guardianship of the person terminate when he or she reaches 18 and that the guardianship be re-petitioned, etc.? No see above

CHILDREN
& THE LAW -
OK?

BA
will answer
8/24

(d) A minor ward lawfully marries.

****NOTE: What if the minor is incompetent? (See ****NOTE under par. (c)?)

(e) The ward dies.

(4) GUARDIANSHIP TERMINATION OF GUARDIANSHIP OF THE ESTATE. A guardianship of the estate shall terminate when if any of the following occurs:

(a) The court adjudicates a former ward who was formerly found to be incompetent or a spendthrift to be no longer incompetent or a ward who was formerly found to be a spendthrift to be capable of handling his or her property.

(b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence.

****NOTE: What if the guardian changes residence from this state to another state?

No impact
8/24

(c) A formerly minor ward attains his or her majority age 18, except where the

****NOTE: Please see the ****NOTE under s. 54.64 (3) (c). Guardianship was ordered on the grounds of incompetency.

(d) A minor ward lawfully marries and the court approves the termination.

****NOTE: Please see the ****NOTE under s. 54.64 (3) (d).

CHILDREN
& THE
LAW - OK?

where guardianship was not ordered on the grounds of incompetency

(e) A ward dies, except when the estate can be settled as provided by s. 880.28
54.66 (4). ^{Yes 8/24}

****NOTE: Have I drafted this paragraph (renumbering and amending s. 880.26 (2) (d), stats.) as you wish? If s. 54.66 (4) applies, would the court just terminate the guardianship after the summary settlement, or do we need to provide specific authority for the court to do that? ^{No 8/24}

(5) ~~DEPLETED GUARDIANSHIPS~~ GUARDIANSHIP ~~When the~~ If a court determines that the estate of the a ward is below ~~\$5,000~~ ^{\$20,000 - amount certified by \$867.03} and reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may terminate do one of the following:

(a) Terminate the guardianship and authorize order disposition of the remaining assets as provided by s. 880.04 (2) 54.12 (1). The court, as a part of the disposition, may order a suitable amount paid to the county treasurer under order of the court or reserved in the guardianship to assure the ward a decent burial, a marker and care for the grave. In the case of an insolvent guardianship, the court may order an amount not exceeding \$400 reserved in the guardianship or paid to the county treasurer under order of the court to assure the ward a decent burial the guardian to make appropriate financial arrangements for the burial or other disposition of the remains of the ward.

(b) Continue the guardianship, but waive requirements for a bond for the guardian and ^{Waive OR Require an} ~~for~~ accounting by the guardian.

54.66 Final accounts. (1) SETTLEMENT OF ACCOUNTS RENDER FINAL ACCOUNT
~~Upon termination of~~ If a court terminates a guardianship, or ~~upon resignation, removal or death of a guardian, such resigns, is removed, or dies, the guardian or the~~ or special administrator guardian's personal representative shall forthwith promptly render the guardian's a final account to the court and to the former ward, the successor guardian, or the deceased ward's personal representative ~~as the case may be.~~ Upon approval of the

~~account and filing proper receipts the guardian shall be discharged and the guardian's bond released or special administrator, as appropriate. If the ward dies and the guardian and the deceased ward's personal representative or special administrator are the same person, the deceased ward's personal representative or special administrator shall give notice of the termination and rendering of the final account to all interested persons of the ward's estate.~~

(2) SMALL ESTATES. ~~When the whole estate of a ward or of several wards jointly, under the same guardianship, does not exceed \$1,000 in value, the~~ The guardian shall be required to render of a ward with a small estate, as specified in s. 54.62 (3) (a), ~~need not file a final account only upon the termination of the guardian's guardianship, unless otherwise ordered by the court. The guardian shall instead provide the court with a list of the ward's assets that remain at the time the guardianship terminates, including at the death of the ward.~~

(3) DISCHARGE. After approving the final account and after the guardian has filed proper receipts, the court shall discharge the guardian and release the guardian's bond.

(4) SUMMARY SETTLEMENT OF SMALL ESTATES. ~~When If~~ If a ward dies leaving an estate which ~~that~~ can be settled summarily under s. 867.01, the court may approve such ~~the~~ settlement and distribution by the guardian, ^{Following the procedures of § 867.01} without the necessity of appointing a personal representative.

54.68 Review of conduct of guardian. (1) CONTINUING JURISDICTION OF COURT. The court that appointed the guardian shall have continuing jurisdiction over the guardian.

(2) CAUSE FOR COURT ACTION AGAINST A GUARDIAN. Any of the following, if committed by a guardian with respect to a ward or the ward's estate, constitutes cause for a remedy of the court under sub. (4):

(a) Failing to timely file an inventory or account, as required under this chapter, that is accurate and complete.

(b) Committing fraud, waste, or mismanagement.

(c) Abusing or neglecting the ward or knowingly permitting others to do so.

(d) Engaging in self-dealing.

(e) Failing to adequately provide for the personal needs of the ward from available estate assets and public benefits.

(f) Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent with the ward's needs and incapacities.

(g) Failing to act in the best interests of the ward.

(h) Failing to disclose conviction for a crime that would have prevented

appointment of the person as guardian, OR that the individual is listed on the "Caregiver Misconduct Registry," under HFS § 13.03(4).

(i) Other than as provided in pars. (a) to (h), failing to perform any duties of a guardian or performing acts prohibited to a guardian as specified in ss. 54.18, 54.19, 54.20, 54.22, 54.25, and 54.62.

****NOTE: In LRB-0039/P1, my ****NOTE under this paragraph in part stated that, although the memo specified ss. 880.192 and 880.251, stats., as cross-references, they were not otherwise touched by the proposal. I now think that s. 880.192, stats., is duplicated by provisions in pars. (b), (d), and (e) and so is unnecessary; I have repealed it. Section 880.251, stats., seems pretty well, although not entirely, duplicated by sub. (2) and s. 54.18 (3); I have repealed it. Please review.

(3) PROCEDURE. Upon the filing of a petition for review of the conduct of a guardian, the court shall hold a hearing in not less than 10, ^{nor} ~~no~~ more than 60, days

Petitioner Mould

and shall order that notice of the hearing be provided to the ward, the guardian, and any other persons as determined by the court.

****NOTE: The provider of notice is, I assume, specified in the order. Is "notice of the hearing" correct, or is there additional notice of the filing of the petition? Should any of this be under s. 54.38?

No 8/24

(4) REMEDIES OF THE COURT. If petitioned by any party or on the court's own motion and after finding cause as specified in sub. (2), a court may do any of the following:

(a) Order the guardian to file an inventory or other report or account required of the guardian.

(b) Require the guardian to reimburse the estate of the ward for losses incurred as the result of the guardian's breach of a duty to the ward.

(c) Impose a financial penalty on the guardian, including denial of compensation for the guardian.

(d) Remove the guardian.

(e) Enter any other order that may be necessary or appropriate to compel the guardian to act in the best interests of the ward or to otherwise carry out the guardian's duties.

(5) REMOVAL OF PAID GUARDIAN. The court may remove a paid guardian if changed circumstances indicate that a previously unavailable volunteer guardian is available to serve and that the change would be in the best interests of the ward.

(6) FEES AND COSTS IN PROCEEDINGS. In any proceeding under sub. (2) or (5), all of the following apply:

(a) The court may require the guardian to pay personally any costs of the proceeding, including costs of service and attorney fees.